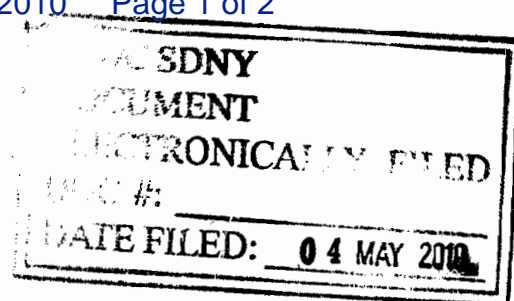


Schulte Roth & Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com



Gary Stein
212.756.2441

Writer's E-mail Address
gary.stein@srz.com

May 3, 2010

DENIED

VIA FACSIMILE

Honorable George B. Daniels
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007-1312


JUDGE GEORGE B. DANIELS

04 MAY 2010

Re: Absolute Activist Value Master Fund Ltd., et al. v.
Florian Himm, et al., No. 09 CIV 8862 (GBD)

Dear Judge Daniels:

We represent Defendant Colin Heatherington in this action. On behalf of Mr. Heatherington and defendants Todd Ficeto, Hunter World Markets, and Craig Heatherington, we respectfully request that the Court adjourn the oral argument on Defendants' motions to dismiss, currently scheduled for May 12, 2010, for approximately one month in light of the appearance recently filed by Defendant Sean Ewing.

As Your Honor will recall, at the initial pretrial conference held on April 1, 2010, the Court scheduled oral argument on Defendants' motions to dismiss for May 12, 2010. At that time Mr. Ewing had not appeared in the action. He did not file an appearance until April 13, 2010. We understand from Mr. Ewing's counsel that Mr. Ewing also intends to move to dismiss and that the arguments to be made in his motion will likely overlap with the arguments made in Defendants' pending motions.

In light of the foregoing, Defendants submit that the interests of judicial efficiency favor a short adjournment of the oral argument on Defendants' motions to dismiss so that Mr. Ewing's motion to dismiss can be argued at the same time. For the Court and the parties to have multiple oral arguments on overlapping issues would needlessly waste judicial resources. Given the briefing schedule agreed to between Plaintiffs and Mr. Ewing, only a short adjournment will be

Honorable George B. Daniels
May 3, 2010
Page 2

necessary because Mr. Ewing's motion to dismiss will be fully briefed by June 9.¹ There would be no prejudice to Plaintiffs from such an adjournment.

We have spoken to Plaintiffs' counsel, who has declined to agree to the requested adjournment. Counsel for Defendant Ulrich Angersbach agrees that one hearing on all of Defendants' motion to dismiss is in the interest of judicial efficiency. Mr. Ewing's counsel takes no position on this request.

We also note that we will be submitting a letter in response to the letter filed by Plaintiffs' counsel on Friday with regard to the Supreme Court's decision last week in *Merck & Co., Inc. v. Reynolds*, No. 08-905, 2010 WL 1655827 (U.S. Apr. 27, 2010).

Accordingly, Defendants respectfully request that the Court adjourn the oral argument set for May 12, 2010.

Respectfully submitted,



Gary Stein

cc: Linda Imes, Esq. (via e-mail)
Michelle Skinner, Esq. (via e-mail)
Thomas V. Reichert, Esq. (via e-mail)
Scott Himes, Esq. (via e-mail)
Gregory Wallance, Esq. (via e-mail)
Robert Owen, Esq. (via e-mail)
Robert Anello, Esq. (via e-mail)
Judith Mogul, Esq. (via e-mail)

¹ Plaintiffs and Mr. Ewing have stipulated to the following briefing schedule: Mr. Ewing will respond to the Amended Complaint by May 10, 2010; Plaintiffs will file an opposition to any motion filed by Mr. Ewing by May 27, 2010; and Mr. Ewing will file any reply by June 9, 2009.